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August 7, 2012

The Honorable Sean H. Lane
United States Bankruptcy Judge
United States Bankruptcy Court for the
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: ***In re MSR Resort Golf Course, LLC et al.*** **(11-10372)**

Dear Judge Lane:

We write on behalf of the Debtors to seek the Court's guidance with respect to two issues that have arisen in connection with Your Honor's July 31, 2012 bench ruling (the "Order") in the Hilton estimation proceeding. (Ex. 1, Tr. at 43.) The first, and most critical, issue concerns Hilton's claim for lost Group Services Expenses. In the Order, the Court granted Hilton's claim for foregone Group Services Expenses ("GSE"), but noted that Hilton's claim for $17 million would have to be adjusted to account for the Court's finding that the appropriate discount rate in this case is higher than the 8% used by Hilton in its damages calculations. (*Id.* at 28-29.) The clear import of the Court's ruling was that Hilton's claim for $17 million in GSE, which was based on Hilton's 8% discount rate, would be adjusted downward. Yet, under the guise of implementing the Order, Hilton now claims that it is entitled to more than $33 million in GSE -- roughly double the amount it sought at trial -- because of supposed mathematical errors committed by its expert, Mr. Cline, and communicated throughout its trial presentation. The Debtors firmly dispute both the merits and introduction of Hilton's new calculations, which are intended to replace, wholesale, the existing trial record on GSE.

The second issue is whether, as both sides agreed at trial, the projections used to calculate Hilton's lost profits damages should be discounted after 2024 to account for the risk of a termination on sale. At trial, Hilton's own expert applied such a discount to what he called the "extension term," yet Hilton now seeks to disavow that limitation in computing damages.

<u>Can Hilton double its claim for lost GSE three weeks after the close of evidence?</u>

Before, during, and after the trial, Hilton repeatedly took the position, and proffered evidence, that its claim for $17 million in GSE was, in fact, a net present value based on its proffered discount rate of 8%. The record on this point is unequivocal and includes, at least:

- The initial report of Mr. Cline, which was admitted into evidence as Waldorf Ex. 25. In his report, Mr. Cline claims to have calculated "NPV of Group Services Expense (for balance of term)" at "8%". (Ex. 2, Cline Rep. at 50.) To be sure, in describing his "Loss Estimate -- Group Services Expense," Mr. Cline expressly noted his use of an 8% discount rate in his calculation, stating: "***The appropriate discount rate is eight percent, established in accordance with the rationale previously outlined.***" (*Id.* at 49.)

- The supplemental expert of Mr. Cline, which was admitted into evidence as Waldorf Ex. 26. In his supplemental report, Mr. Cline expressly states that his calculations for "Loss Relating to foregone payments for Group Services" were premised upon a discount rate of 8%. (Ex. 3, Cline Supp. Rep. at 30.)

- The trial testimony of Mr. Cline, who, when discussing Hilton's GSE claim, was expressly asked by Hilton counsel, "***Why did you use an eight percent discount rate?***" (Ex. 4, 7/3 Tr. at 829.) Mr. Cline replied: "The eight percent discount rate is used [in calculating GSE] for the same reason that I had used it for the management fees, the three percent management fee, because that is the rate that I deemed to be suitable for fee income like this. And there is no reason to project -- or rather, to use a different discount rate for this type of income…." (*Id*.) To emphasize the point, on direct examination, Hilton's counsel instructed Mr. Cline to "work through your analysis" on page 50 of his expert report, the precise page on which Mr. Cline states that he calculated the "NPV of Group Services Expense (for balance of term)" by using an 8% discount rate. (*Id.* at 827, referring to Ex. 2 at 50.) On cross, Mr. Cline confirmed that Hilton's foregone Group Services Expenses were $17 million. (Ex. 4, 7/3 Tr. at 925.)

- The post-trial submissions of Hilton, where it twice stated that the net present value of lost GSE was $17 million (Ex. 5, Hilton Post-Trial Br. at 57-58) and repeatedly argued for an 8% discount rate (*id.* at 43 ("the 8% discount rate is the only appropriate rate to measure the damages Hilton would suffer").).

In granting in part Hilton's claim for GSE, the Court specifically relied upon the record that Hilton submitted to demonstrate its $17 million claim, which, according to the undisputed evidence, Hilton arrived at by applying an 8% discount rate: "The Court notes that Hilton has sought some $17 million in group services expense, a number that has been described to me as having been discounted to net present value." (Ex. 1, Tr. at 28.)

Critically, the Court then noted that Hilton's award for GSE "presumably should be adjusted" because it was premised upon Hilton's proffered 8% discount rate -- a rate that the Court rejected as too low because it did not reflect the heightened risks of the three resorts at issue. (Ex. 1, Tr. at 22-23, 29.) As the Court stated:

> While the Court awards group services expense, it notes that the correct number may be different than the $17 million. While the parties do not address the issue, the Court's prior ruling on the discount rate presumably applies to this component

> of damages; and therefore, this number presumably should be adjusted accordingly.

(*Id.* at 28-29.)

Hilton apparently views the Court's ruling as an invitation to fundamentally recast its claim for GSE. Indeed, rather than decreasing its $17 million claim to reflect the application of the higher discount rate determined by the Court, Hilton now claims that it is actually entitled to $33 million in lost GSE, roughly 194% more than the $17 million it sought at trial. (Ex. 6, 8/1/2012 email from D. Neff and attachment.) To support its new claim, Hilton posits that the evidence it relied upon throughout discovery and at trial included mathematical errors that undervalued Hilton's claim for lost GSE. Specifically, Hilton now contends that instead of the 8% discount rate that it introduced into evidence and represented it was applying, Hilton ***actually applied a 45% discount rate to yield its $17 million claim***. Recognizing those alleged errors only now, nearly three weeks after the conclusion of the trial, Hilton contends that that the net present value of its lost GSE at an 8% discount rate is actually $36 million, not the $17 million that Hilton sought at trial. And according to Hilton, applying the Court's discount rates of 11.6% and 12.6%, rather than Hilton's 8% rate, yields a total GSE award of roughly $33 million.

Hilton's post-verdict attempt to redo its claim for GSE represents an improper attempt to modify the Court's Order under Rule 60. As the Court's Order made clear, Hilton's claim for $17 million in lost GSE "presumably should be adjusted" to reflect the Court's determination that the appropriate discount rate was higher than 8%, meaning that Hilton's damages number would be ***reduced***. (Ex. 1, Tr. at 22-23, 29.) Yet, based on its own purported mistake, Hilton now seeks to modify the Court's Order to open the door to an increase in Hilton's damages number. Hilton's position is contrary to law.

The only valid bases for modifying an Order applicable to this case are "(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)[.]" Fed. R. Civ. P. 60(b). Hilton clearly cannot satisfy either of these prongs. As to the first prong, "[i]t is well-settled that mere dissatisfaction in hindsight with the choices deliberately made by counsel is not grounds for finding the mistake, inadvertence, surprise or excusable neglect necessary to justify Rule 60(b)(1) relief." *Quinones v. Police Dept. of the City of New York*, No. 10 Civ. 6195, 2012 WL 1232954, at *5 (S.D.N.Y. Apr. 12, 2012). And as to the second prong, it is beyond purview that Hilton could have discovered its allegedly new evidence concerning discount rates months before the estimation trial. *See Salter v. Hooker Chem., Durez Plastic & Chem. Div.*, 119 F.R.D. 7, 9 (W.D.N.Y. 1988) (denying motion under Rule 60(b), holding that "[a]s to plaintiff's claim that he has newly discovered evidence, plaintiff must establish, *inter alia*, that he exercised due diligence to discover this evidence earlier…"); MOORE'S FED. PRAC. 3d Ed. Vol. 12 60.41(1)(c) ("Regardless of whether a court uses the word 'diligence' or not, when inadvertent conduct leads to judgment, a claim of mistake or excusable neglect will always fail if the facts demonstrate a lack of diligence.").

Not only does Hilton improperly seek to modify the Order, it also attempts to reopen the record and retry its claim for GSE, an attempt that should be rejected under Rule 59. While Hilton takes the position it is merely implementing the Order, in truth Hilton is seeking to reopen the trial record to change both the discount rate that it allegedly applied to its GSE claim (from 8% to 45%) and the entire amount and calculation of its GSE claim (from $17 million to $33 million). Hilton cannot satisfy its burden of establishing the need for such extraordinary relief. *See John v. Sotherby's, Inc.*, 858 F. Supp. 1283, 1288 (S.D.N.Y. 1994) ("The movant has the burden of demonstrating that the moving party's failure to submit evidence was not the result of its own lack of diligence, reopening the record would not unduly prejudice the nonmovant, and reopening the record would further the interests of justice.").

Hilton's belated recognition now -- after the record closed and a verdict issued -- of its own purported math errors is no basis for Hilton to undertake a wholesale revision of the trial record. To the extent that Mr. Cline committed mathematical error, it was error that Hilton, though a diligent investigation, could have, and should have, corrected long before the record closed. Mr. Cline served his initial expert report on May 11, 2012, served his supplemental expert report on June 11, 2012, sat for deposition on June 19, 2012, and testified at trial on July 3, 2012. And Hilton served its post-trial brief on July 19, 2012. Yet, it was not until August 1, 2012 that Hilton for the first time sought to redo its calculation of its alleged damages from lost GSE. Clearly, Hilton had more than ample opportunity to correct any alleged error in its claim for lost GSE, and its failure timely to do so wholly undermines its request to reopen the record. *See Schoenholtz v. Doniger*, 112 F.R.D. 110, 114 (S.D.N.Y. 1986) ("Put another way, we see no good and sufficient reason -- and defendants offer none -- why the evidence sought to be introduced at this late date was not offered at the time of trial."); *Ortho Diagnostic Sys., Inc. v. Abbott Labs, Inc.*, 926 F. Supp. 371, 372 (S.D.N.Y. 1996) ("An application to reopen the record ordinarily will be denied unless the party seeking to expand the record failed to adduce the evidence sought to be added notwithstanding its own due diligence.").

Permitting Hilton a second bite at its damages claim based on evidence that the Debtors never had the opportunity to challenge or rebut at trial would undeniably prejudice the Debtors. Hilton's new calculations would fundamentally impact every component of damages that Hilton sought at the estimation trial, increasing its GSE claim from the $38.9 million it actually sought to at least $57.7 million (representing the $36 million that Hilton now claims it is entitled to in GSE applying an 8% discount rate plus the $21.7 million it sought in Key Money), and increasing its overall rejection damages claim from $334.3 million to at least $353.3 million. Hilton should not be allowed to change the scope of the estimation trial after the fact. The Debtors appropriately crafted their trial defense on the basis of Hilton's pretrial Rule 26 disclosures and trial evidence, including Hilton's claim that it was seeking $17 million in lost GSE based upon the application of an 8% discount rate. Based on Hilton's evidence, the Debtors made critical strategic decisions concerning how to address Hilton's GSE claim in their supplemental expert reports, how to attack Hilton's GSE claim during trial (both in the cross-examinations of Hilton's witnesses and the direct examinations of the Debtors' witnesses), and how much emphasis to place on Hilton's GSE claim in their pre- and post-trial briefs. As such, the Debtors are entitled to the finality of the verdict that resulted from that trial evidence. *See*

Zdanok v. Glidden Co., 327 F.2d 944, 953 (2d Cir. 1964) ("where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again"). The Debtors would be grossly prejudiced by permitting Hilton to unilaterally "correct" its purported trial mistakes now that the record is closed and a verdict has issued.

Whereas Hilton improperly seeks to modify the Court's ruling, the Debtors seek to give effect to that ruling by adjusting Hilton's claim for damages from lost GSE to account for the discount rates determined by the Court. To do that, the Debtors first calculated the ratio of Hilton's proffered discount rate of 8% to the Court's discount rates of 11.6% and 12.6%, which, on a weighted basis, yield a blended discount rate of just over 12%. The result is that Hilton's proffered 8% discount rate is two-thirds, or 67%, of the appropriate discount rate as determined by the Court. Applying this same ratio to Hilton's claim for lost GSE yields a damages number of $11.365 million, or two-thirds of the $17 million that Hilton sought at trial.

Should the Court's lost profits award be discounted to account for the possibility of termination on sale?

The second dispute between the parties centers upon whether Hilton's projected management fees should be discounted after year 2024 to account for the probability that the resorts will be sold and Hilton terminated as manager. During trial, it was undisputed that such a discount was required, as both sides recognized that the Debtors have the right to terminate Hilton upon a sale of the resorts beginning in 2024. As such, Hilton's own expert, Mr. Cline, applied a probability analysis at page 46 of his initial expert report, and explained his reasoning during trial: "And I figured, well, wait a second, what if someone said to me, but Roger, you know, come January the 2nd of 2025, guess what, this owner has every intention of selling this place. And they come to Hilton and say we have found a buyer, you're out, here's a check for five times the management fee. So that's a possibility. I don't know whether it can happen. It might. So I decided to develop a model that would describe that process." (Ex. 4, 7/3 Tr. at 817-819, quote at 819:4-12); *see also* Ex. 2, Cline Rep. at 46; Ex. 5, Hilton's Post-Trial Br. at pp. 52-53.) Applying Mr. Cline's model results in a lost damages award of $104 million (not including any GSE damages), whereas the failure to apply Mr. Cline's analysis results in a lost profits award of $112.38 million.

As noted at the outset, the Debtors respectfully request the Court's guidance on resolving these significant issues. Should it be helpful, we have included the Debtors' damages calculations at Ex. 7. The Debtors are available at the Court's convenience to address any questions the Court may have.

Respectfully submitted,

/s Eric F. Leon

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	.
	. Chapter 11
IN RE:	.
	. Case No. 11-10372 (SHL)
MSR RESORT GOLF COURSE, LLC,	.
et al,	. New York, Ne York
	. Tuesday, July 31, 2012
Debtors.	. 4:09 p.m.
. . . .	.

TRANSCRIPT OF BENCH RULING RE:
TRIAL RE: MOTION TO AUTHORIZE; MOTION OF MSR RESORT GOLF COURSE, LLC, ET AL, FOR ENTRY OF AN ORDER ESTIMATING DAMAGES RESULTING FROM REJECTION OF THE HILTON MANAGEMENT AGREEMENTS AND AN ORDER AUTHORIZING REJECTION OF THE HILTON MANAGEMENT AGREEMENTS

BEFORE THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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the size of the resorts, the brand, and the volatility as to the Grand Wailea. He noted the Grand Wailea's risk, in his view, included the remote location, the dependency on air travel, the dependency on group travelers, and natural conditions.

Based on the credible evidence and the applicable law, the Court starts off by adopting the WACC used by Mr. Morone.

The difference between Bloomberg's WACC of 8.7 percent and Mr. Morone's determination is that Mr. Morone used a beta of 1.29, as opposed to a beta of one. The affidavit of debtors' expert Derek Pitts provides support for the assertion of using a beta of 1.29; and in fact, Mr. Pitts' affidavit provides the only real analysis of beta in this case.

Using that beta and information from Hilton's own 10-K, I reach the conclusion that Hilton's WACC at the time of entering these management agreements was 10.6.

Mr. Hennessey opined that Hilton's WACC was 8.1, but based his finding upon an internal Bear Stearns estimate published in December 2006, almost a year after Hilton acquired the resorts.

I also note that Hilton's expert makes reference to Bloomberg's WACC. There was discussion at trial that Bloomberg apparently uses a default beta of one. It was unclear from the testimony; and indeed, no one seemed to know if that default of one was used in all instances for Hilton, in all instances for

all companies. And as no party has provided any explanation of the basis for using that default of one here, the Court instead relies on the 1.29 beta, for which analysis has been provided by Mr. Pitts.

On the one hand, Hilton has failed to establish that the management agreements lack any risk, and that its eight percent rate that it applies to all acquired management agreements is sufficient to discount its future fees upon rejection. Indeed, credible evidence has been presented showing that these iconic resorts are exposed to unique risks that make their revenue streams more volatile than a typical Hilton property, supporting an upward adjustment of the WACC, which represents the riskiness to Hilton's business as a whole. Thus, the Court rejects the notion that the same risks apply to these resorts as apply to the operation of one of Hilton's Hampton Inns.

On the other hand, the debtors have failed to persuade the Court that the attendant risks are as high as they claim. There is credible evidence that the management fees here, taken from gross revenues, rather than profits, are a less risky source of revenue for Hilton than many of Hilton's other revenue streams and other revenue streams at the resort.

For all these reasons, the Court will adjust the WACC for the Arizona Biltmore and the La Quinta upward by one percent, to arrive at a discount rate of 11.6. And this is to

account for the attendant risks identified by Mr. Morone and discussed by Mr. Pitts.

The Court will adjust the WACC for the Grand Wailea by two percent upwards, rather than one percent, to reach a discount rate of 12.6, based on the aforementioned attendant risks, plus additional risks unique to the Grand Wailea that were discussed at the trial, and that have been mentioned previously, including its location.

The one additional percent increase is also appropriate to account for the possibility that the Grand Wailea may fail the performance tests over the life of these agreements. The credible evidence was that there have been real economic struggles in the recent performance of the Grand Wailea, which is perhaps the most iconic, and thus most unique of these three resorts. These struggles have been evidenced by various metrics that Hilton itself prepared, rating performance at the resort. These difficulties no doubt have been influenced by the current economic downturn and Grand Wailea's location and unusual dependence on group bookings for success; bookings that are incredibly sensitive to the economy.

Such an adjustment for risk has been recognized by the courts. See In Re M Waikiki, LLC 2012 WL 2062421, *4-5, adjusting the WACC upwards to account for performance-based termination risk.

See also Pet Food Express Limited v. Royal Canin USA,

Inc., 2011 WL 1464874, *12 (N.D.Cal.), noting that the failure to reduce damages due to uncertainty of lost profits towards the end of an agreement ignores the contingency in the agreement that would have allowed a defendant to terminate the agreement prior to the end of the term for plaintiff's failure to perform its contractual duties and obligations.

The Court now turns to the related issue of cure payments. Debtors' expert Mr. Morone deduced some $7 million in cure payments because he contends that Hilton will fair the performance test and will need to make cure payments on two occasions:

First, in his view, it will fail in 2013 and '14, and because the debtors can terminate the contract, Hilton will need to make a cure payment of some $6 million.

As to the second instance, based on a so-called "Monte Carlo Analysis," Mr. Morone concludes that Hilton will again fail the performance test as to the Grand Wailea in 2031, prompting a second cure payment of almost a million.

Mr. Morone believes that both these cure payments should be deducted from Hilton's profits.

The Court rejects the debtors' arguments as unduly speculative for several reasons:

First, while the Court agrees there is a risk that Hilton will fail the performance test at the Grand Wailea, that failure has not been shown to the degree of certainty so as to

continue until Hilton completely replaces the amount of group services expenses previously contributed by the Hilton Resorts, which its primary expert estimates will take at least five years.

In addition to the group services expense itself, Hilton seeks to recover $21 million in so-called "key money," which it alleges are payments that it will need to make to obtain additional management agreements to replace the ones that it would lose; and therefore, to replace the lost group services expense. Key money represents funds that a management company may be required to pay a hotel owner to obtain those management rights.

For their part, the debtors argue that the group services expenses exceed the cap established in the management agreements, and accordingly should be reduced to the amount actually expended, so that Hilton is no longer subsidizing the difference. The debtors further argue that Hilton is also not entitled to the $17 million in group services expense damages because the management agreements don't permit recovery of such expenses, and that Hilton will replace any lost group services by 2014, and that Hilton can simply elect to avoid incurring any such damages. Finally, the debtors assert there is no basis for Hilton's request for the $21 million in key money.

Given the facts and applicable law, the Court grants in part and denies in part Hilton's request for damages in

connection with group services expense. The language of the management agreements contemplates the payment of group services expenses for the costs incurred in providing group services to the Waldorf=Astoria brand generally.

The evidence established that Hilton has used such funds for their intended purpose. The mere fact that Hilton may spend more than is required for that purpose for its own business reasons is irrelevant. All that matters is that Hilton seeks only to recover the fee provided for under the management agreements, not any extra costs beyond that. Moreover, there was no evidence at trial that Hilton intended in the future to spend less on group services for the Waldorf=Astoria brand than is contemplated by the management agreements.

Relatedly, the Court concludes that Hilton's request for payments of these fees for a five-year period represents an appropriate exercise of its duty to mitigate its damages. See, e.g., Shaffer v. Debbas, 21 Cal. Rptr. 2d 110, 114 (Cal. App. 1993), as well as Shahata v. W Steak Waikiki, LLC, 721 F.Supp. 2d 968, 988 (D. Haw. 2010).

The Court notes that Hilton has sought some $17 million in group services expense, a number that has been described to me as having been discounted to net present value. While the Court awards group services expense, it notes that the correct number may be different than the $17 million.

While the parties do not address this issue, the Court's prior ruling on the discount rate presumably applies to this component of damages; and therefore, this number presumably should be adjusted accordingly.

Moving on to the second aspect of Hilton's group services claim, the Court rejects Hilton's request for the payment of so-called "key money" for several reasons.

As an initial matter, the provision to pay key money is nowhere mentioned in the management agreements, in stark contrast to the group services expense itself, so that it is very hard to say the key money was within the parties' contemplation at the time of contract formation as an appropriate measure of damages, and is particularly troubling given that the amount of key money sought here is in fact greater than the amount of damages actually sought for group services expense.

In any event, the evidence at trial was insufficient to support Hilton's claim for key money damages. Hilton cannot identify which hotel agreements this key money will be used to acquire. Instead, Hilton's claim for recovery of key money is not grounded on any specific facts, but rather on Mr. Cline's professional judgment.

But Mr. Cline based his analysis, specifically the twenty-five percent ratio assumption he used for calculating key money, upon conversations with Ted Middleton, Hilton's Vice

President of Development. Middleton, however, later testified that he had done no analysis of the amount of key money that Hilton would be required to pay to replace the group services expense payments, and was not aware of anyone else at Hilton who performed such analysis.

Finally, the Court notes that Hilton itself concedes that whatever management agreements it may one day acquire could very well be management agreements that Hilton would seek to acquire regardless of whether these management agreements are actually rejected.

So for all those reasons and the lack of evidence supporting the necessity of key money payments, the Court rejects that component of damages.

I now turn to Hilton's request for so-called "brand damages." Hilton seeks approximately $120 million in damages stemming from its alleged damage to Hilton's Waldorf=Astoria brand. These damages purport to stem from the debtors' termination of the management agreements and flow from the theory that these properties are "iconic and irreplaceable," which is a phrase that has been used often in this trial and seems to not be in dispute.

Hilton argues that such damages were contemplated by the parties when Hilton acquired the agreements in 2006, as part of an effort to launch the Waldorf=Astoria brand. Hilton believed the acquisition of these management agreements for

to the resort for the period during which construction was underway, and could result in potential lost business, required discounting, and loss of good will among affected guests. The debtors anticipate that the adverse effect on revenue and earnings could last as long as two years.

Relatedly, the Court notes that the evidence that group bookings typically have a provision that forbids them to cancel their reservation if there's ongoing construction, and that such group bookings are crucial to the Grand Wailea's economic success.

That concludes the Court's rulings on the motion to estimate damages from rejection of these three management agreements.

Again, as I noted earlier, it's my normal preference to provide a written decision to the parties, but debtors explained the need for a quick resolution of this dispute and requested a decision, if at all possible, by August 1st, 2012, which is tomorrow; and the need for such an expedited decision relates to the existing deadlines for an exit strategy in the case, either by plan or sale or some combination of both. And those deadlines for an exit strategy were the result of hotly contested hearings on exclusivity in this case, and that were resolved by agreement of the parties on the timing for an exit strategy. And so I understand the quandary faced by the debtors; and therefore prepared this bench ruling.

However, this being a bench ruling and transcription being what it is, I plan to review the transcript to ensure that it accurately reflects my ruling; and therefore reserve the right to amend it accordingly.

So I'd ask the debtors to order the transcript on an expedited basis, and I'll take a look at it.

And I also request that the debtors prepare an order memorializing my ruling, and obviously consult with Hilton's counsel on the appropriate language to do so.

So that didn't take quite an hour and a half; it was a little shorter than my estimate, but that concludes my business for the day.

Is there anything that any party needs to raise?

MR. LEON: No. I just wanted to take the opportunity to once again thank Your Honor and your staff for accommodating the parties, our schedule, and in particular the debtors' short time constraints. It's very much appreciated on all sides. And we also appreciate Your Honor's attention to this matter.

THE COURT: Absolutely.

Mr. Neff, is there anything you need to raise at this time?

MR. NEFF: Your Honor, did you want the parties to attempt to come up and try to quantify what the amount is?

THE COURT: Well, that actually was going to be the next thing I was going to mention. If you noted, there is no

ultimate bottom-line quantification. That's because there are many components to this that I was trying to get right, and I was going to leave you all to do the math, particularly as to the discount rate.

So yes, I -- that, I think, would be the appropriate subject of discussion, in terms of memorializing the ruling in an order.

MR. NEFF: Very good.

THE COURT: All right. Thank you.

Anything else? All right.

MR. LEON: Nothing for debtors.

THE COURT: Thank you. Have a good evening.

MR. LEON: Thank you, Your Honor. You, too.

MR. NEFF: Thank you, Judge.

(Proceedings concluded at 5:15 p.m.)

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EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
MSR Resort Golf Course LLC, et al.,	)	Case No. 11-10372 (SHL)
Debtors	)	Jointly Administered

EXPERT REPORT OF ROGER S. CLINE REGARDING THE ESTIMATED DAMAGES INCURRED BY WALDORF=ASTORIA MANAGEMENT LLC AS A CONSEQUENCE OF THE REJECTION OF THE HOTEL MANAGEMENT AGREEMENTS RELATING TO ITS MANAGEMENT OF THE GRAND WAILEA RESORT, THE ARIZONA BILTMORE HOTEL AND THE LA QUINTA RESORT

Loss Estimate – Management Fees (contd.)

Loss Estimate - Management Fees (Extension Term: 2025 - 2034)

Approach A:		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Base Management Fee		$ 13,405	$ 13,808	$ 14,222	$ 14,649	$ 15,088	$ 15,541	$ 16,007	$ 16,487	$ 16,982	$ 17,491
Corporate Overhead Fee		$ 6,703	$ 6,904	$ 7,111	$ 7,324	$ 7,544	$ 7,770	$ 8,003	$ 8,244	$ 8,491	$ 8,746
Total Management Fee		$ 20,108	$ 20,711	$ 21,333	$ 21,973	$ 22,632	$ 23,311	$ 24,010	$ 24,731	$ 25,472	$ 26,237
Present Value Factors @ 12%		0.8929	0.7972	0.7118	0.6355	0.5674	0.5066	0.4523	0.4039	0.3606	0.3220
Present Value		$ 17,955	$ 16,511	$ 15,185	$ 13,964	$ 12,841	$ 11,809	$ 10,860	$ 9,989	$ 9,185	$ 8,448
Net Present Value at 1/1/2025 @	12%	**$ 126,747**									
Approach B:		2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
HMA Section 3.4.3. Multiplier X Base Fee		5	4.5	4	3.5	3	2.5	2	1.5	1	1
Base Fee (2% of Revenue)		$ 13,405	$ 13,808	$ 14,222	$ 14,649	$ 15,088	$ 15,541	$ 16,007	$ 16,487	$ 16,982	$ 17,491
Termination Fee		$ 67,027	$ 62,134	$ 56,887	$ 51,270	$ 45,264	$ 38,852	$ 32,014	$ 24,731	$ 16,982	$ 17,491
Probability of Sale		25%	20%	15%	10%	5%	0%	0%	0%	0%	0%
Expected Value of Termination Fee (assume sale at YE)		$ 16,757	$ 12,427	$ 8,533	$ 5,127	$ 2,263	$ -	$ -	$ -	$ -	$ -
Probability of Sale not taking place		75%	55%	40%	30%	25%	25%	25%	25%	25%	25%
Expected Value of Fees (Note 1)		$ 36,865	$ 27,960	$ 20,266	$ 13,916	$ 9,053	$ 5,828	$ 6,003	$ 6,183	$ 6,368	$ 6,559
Present Value Factors @ 8%		0.9259	0.8573	0.7938	0.7350	0.6806	0.6302	0.5835	0.5403	0.5002	0.4632
Present Value		$ 34,133	$ 23,970	$ 16,087	$ 10,228	$ 6,161	$ 3,673	$ 3,502	$ 3,340	$ 3,185	$ 3,038
Net Present Value at 1/1/2025 @	8%	**$107,323**									
Note 1. a) Mgmt Fee times Prior Yr's Probability of Sale not taking place plus b) Expected Value of Termination Fee											
Reconciliation:											
Approach A:		$ 126,747									
Approach B:		$107,323									
		$ 234,070									
Average		**$ 117,035**									
Net Present Value as at 1/1/2012 @	8%	**$43,034**									

Loss Estimate – Group Services Expense (contd.)

- In the analysis presented on the following page, the loss of payments to Hilton for Group Services as a consequence of the early termination of the HMAs is valued. The valuation is developed on the basis of several key assumptions as follows:
  - It will take five years for Hilton to fully replace the revenues associated with the Resorts that would generate a payment equivalent to that which it would have received had the HMAs continued in effect;
  - At the end of the above-referenced five-year period, Hilton would be required to pay an amount of “key money” to secure HMAs that would produce the stream of payments that it would have received had the HMAs continued beyond this five-year period, to their full term (2034), accounting for the probabilities that the HMAs might be terminated upon a sale of the Resorts during the Extension Term.
  - The ratio of “key money” to the net present value of the anticipated payments [$86.945M] would be 25 percent. The key money would thus amount to $21.736M.
  - The loss to Hilton of the Group Services Expense payments made by the Resorts is represented by the present value of those anticipated payments over the five-year period 2012 to 2016 plus the present value of the key money payments made by Hilton as outlined above.
  - The appropriate discount rate is eight percent, established in accordance with the rationale previously outlined.
- The result of the above-described analysis is presented on the following page and in summary produces a total loss to Hilton attributable to the termination of payments for Group Services by the Resorts in the amount of $38.926M.

Loss Estimate – Group Services Expense (contd.)

Loss Associated with Group Services Expense						
Contract Year		8	9	10	11	12
		2012	2013	2014	2015	2016
Group Services Expense @ 2% of Gross Revenue		$ 7,698	$ 8,544	$ 9,254	$ 9,975	$ 10,274
Probability of Sale not taking place		100%	100%	100%	100%	100%
Expected Value of Group Services Expense		$ 7,698	$ 8,544	$ 9,254	$ 9,975	$ 10,274
NPV of Group Services Expense (for balance of term)	8%					$86,945
Number of Years to Replace Revenue base	5					
Key Money ratio						25%
Key Money paid by Hilton (a)						$21,736
Lost Group Services Expense Now Paid by Hilton (b)		$ 7,698	$ 8,544	$ 9,254	$ 9,975	$ 10,274
Total Paid by Hilton (a+b)		$ 7,698	$ 8,544	$ 9,254	$ 9,975	$ 32,010
Present Value Factors @ 8%		0.9259	0.8573	0.7938	0.735	0.6806
Present Value		$ 7,127	$ 7,325	$ 7,345	$ 7,332	$ 21,786
Total		$ 50,915				
NPV	8%	**$38,926**				

Note that the "probability of sale not taking place" changes during the Extension Term of the HMAs as outlined in the schedule on Page 46

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
MSR RESORT GOLF COURSE LLC, *et al*.,	)	Case No. 11-10372 (SHL)
Debtors.	)	Jointly Administered

SUPPLEMENTAL EXPERT REPORT OF ROGER S. CLINE REGARDING THE ESTIMATED DAMAGES INCURRED BY WALDORF=ASTORIA MANAGEMENT LLC AS A CONSEQUENCE OF THE REJECTION OF THE HOTEL MANAGEMENT AGREEMENTS RELATING TO ITS MANAGEMENT OF THE GRAND WAILEA RESORT, THE ARIZONA BILTMORE HOTEL AND THE LA QUINTA RESORT

	Summary of Outcomes With Selected Adjustments to Mr. Morone's Lost Profits Analysis								
		Grand Wailea		Arizona Biltmore		LaQuinta Resort		All 3 Resorts	
	Discount Rate	14.6%	8.0%	13.6%	8.0%	13.6%	8.0%	A	B
A	Mr. Morone's Damages Amount	$ 12,470	$ 22,463	$ 13,856	$ 21,892	$ 19,800	$ 31,375	$ 46,125	$ 75,730
B	Adjust for 3% Inflation	$ 14,351	$ 26,264	$ 14,959	$ 23,894	$ 20,246	$ 32,333	$ 49,556	$ 82,491
C	Adjust for Inclusion of Corporate Overhead Fee as Gross Fee to Hilton rather than a Reimbursement for "Overhead"	$ 29,910	$ 52,548	$ 23,453	$ 37,340	$ 30,369	$ 48,499	$ 83,732	$ 138,387
D	Adjust for Elimination of "Subsidy"	$ 39,481	$ 68,241	$ 25,481	$ 40,338	$ 30,369	$ 48,499	$ 95,330	$ 157,077
E	Adjust for Elimination of Cure Payment	$ 46,678	$ 78,853	$ 25,481	$ 40,338	$ 30,369	$ 48,499	$ 102,527	$ 167,689
F	Total Variance to Morone Damages Amount (E-A)	$ 34,208	$ 56,390	$ 11,625	$ 18,446	$ 10,569	$ 17,124	$ 56,402	$ 91,959
	Compares to Losses Presented in R. Cline Report (Page 6):								
G	Loss relating to Foregone Management Fees		$ 77,306		$ 40,396		$ 47,706		$ 165,409
H	Adjusted Loss Presented by Mr. Morone		$ 78,853		$ 40,338		$ 48,499		$ 167,689
I	Variance (G-H)		$ (1,547)		$ 58		$ (793)		$ (2,280)
	Additional Losses Presented in R. Cline Report:								
J	Loss Relating to foregone payments for Group Services		$ 18,193		$ 9,507		$ 11,227		$ 38,926
K	Loss to W=A Brand, Pipeline and Growth Prospects		$ 66,107		$ 24,039		$ 30,049		$ 120,195
L	Loss relating to Grand Wailea Expansion		$ 9,804						$ 9,804
M	Total		$ 94,104		$ 33,546		$ 41,276		$ 168,925
N	Total Loss Estimate of R. Cline (G+M)								$ 334,334
O	Total Variance between Morone and Cline Loss Estimates (Line N less Line A @ Discount Rate "A")								$ 288,209

`3

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	.
	. Chapter 11
IN RE:	.
	. Case No. 11-10372 (SHL)
MSR RESORT GOLF COURSE, LLC,	.
et al,	. New York, New York
	. Tuesday, July 3, 2012
Debtors.	. 10:05 a.m.
. . . .	. Volume 7. Pages 735-848

TRANSCRIPT OF
TRIAL RE: MOTION TO AUTHORIZE/MOTION OF MSR RESORT GOLF COURSE LLC, ET AL, FOR ENTRY OF AN ORDER ESTIMATING DAMAGES RESULTING FROM REJECTION OF THE HILTON MANAGEMENT AGREEMENTS AND AN ORDER AUTHORIZING REJECTION OF THE HILTON MANAGEMENT AGREEMENTS

BEFORE THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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and he acknowledged that this is an area where many of their contributors, in fact, include resort fees. It's an area of some -- I wouldn't call it "controversy," but some uncertainty, if you will, subject to interpretation, and so it occurs.

My conclusion is that, number one, Hilton appropriately includes its resorts fees as part of this; furthermore, could include additional revenue, such as its -- in the case of Grand Wailea, the Ho'olei condominium income, in their room rate, which would have the affect of raising it, making this test more difficult to fail.

And in the agreement itself, I should point out, although the uniform system of accounts is the -- essentially the system that is adopted by the parties, Hilton has the ability to vary from this uniform system. So even if the uniform system said X, there is a clause in here under accounting that allows Hilton to modify its application of the uniform system of accounts.

Q In looking at Grand Wailea, did you consider at all its group booking pace?

A I did.

Q And how did that impact your conclusion?

A Well, as Mr. Bailey testified yesterday, the hotel has taken, certainly, its hits during the great recession for a variety of reasons. However, my review of the recent booking pace reports reinforces my conclusion that the Grand Wailea,

under Mr. Bailey's and Hilton's management, is certainly coming out of that downward track from the great recession and coming out very strongly. And in fact, that booking pace certainly points to a positive trajectory, which in fact is what I incorporated into my projections.

Q And was there any issue with regard to the Arizona Biltmore or the La Quinta possibly failing the performance test?

A No.

THE COURT: Just before we leave this issue, since you pointed out Page 47 and 46 of the report, would you be so kind to give a general explanation of how the numbers -- the setup of your chart on Page 46?

THE WITNESS: Yes. Putting -- I'm sorry. 46?

THE COURT: 46. 47 is --

THE WITNESS: Yeah.

THE COURT: -- is a small enough charge --

THE WITNESS: Yeah.

THE COURT: -- even I can master 47. But 46 is a little more detailed.

THE WITNESS: Yes, Your Honor. No problem.

As I said earlier, this ten-year extension term is different than the base term because the owner has the option to terminate the agreement, if it sells the hotel to a third party, so the risks are different to Hilton.

So in thinking about this, Approach A is the

straightforward, simple approach. Approach A basically takes the two fees, the base fee and this so-called "corporate overhead fee," projects it out, and discounts the income back by twelve percent during the course of the extension term.

You will see it says "present value factored at twelve percent." So you arrive at present value at January the 1st, 2025, which is the day of the beginning of the extension term, with a value of a hundred and twenty-six million, seven forty-seven.

THE COURT: And is the one twenty-six the sum of all the numbers in the prior line?

THE WITNESS: It is.

THE COURT: All right.

THE WITNESS: So what that represents is the present value discounted at twelve percent, as opposed to the eight percent discount factor I used during the base term. So it's a different approach. I've increased the discount rate by 400 bases points --

(Reporter confers.)

THE WITNESS: Discount rate by 400 bases points to reflect the increase risk that these fees will be interrupted if, in fact, the contract goes away.

But you will see in that ten-year term under Approach A, they don't go away. They stay. So the risk is reflected in the discount rate, not in the projected income. Okay? So

that's the simple approach.

But I always like to look at things with a little more complexion than that. Things aren't so simple.

And I figured, well, wait a second, what if someone said to me, but Roger, you know, come January the 2nd of 2025, guess what, this owner has every intention of selling this place. And they come to Hilton and say we have found a buyer, you're out, here's a check for five times the management fee. So that's a possibility. I don't know whether it can happen. It might.

So I decided to develop a model that would describe that process. It's a little complicated, but suffice it to say that if you look down the -- Approach B, the fourth line has something called "probability of sale." So what I'm basically doing here is assigning a probability that the hotel will actually, in fact, be sold.

And in the first year you can see it's twenty-five percent. I decided that, in my judgment, based on all my factors and experience and what have you, that in that -- during the course of that first year, there was a one-in-four shot, twenty-five percent, that this property will get sold, Hilton would be terminated, and it would receive its management fee for that year, plus its liquidated damages the end of the year.

But since that probability is only twenty-five

percent, it means that, at the end of that first year, there's a seventy-five percent probability that they'll still be there the next year, and so on. And so, without going into all of the math, that's essentially the concept.

THE COURT: All right.

THE WITNESS: Does that help.

THE COURT: Yes, it does.

And I guess, again, the one oh seven three twenty-three is the sum of all the numbers listed in the present value line above it?

THE WITNESS: Right.

And then, just to finish up, if I may Your Honor, just like in appraisals where you use two, or maybe even three different approaches, and look at how they vary from each other, I looked at these two approaches and compared them and saw that they were within the strike zone of each other. One was 126 million; the second approach produced 107 million. So I decided the most straightforward concept here was to average the two, and that's what 117 million is.

But here's the important part to note, if I may. That $117 million is the value as at January the 1st, 2025, the beginning of the extension term. That now requires discounting back to today. And that discount rate I used eight percent, just as I did at the beginning during the base term. And so --

BY MR NEFF:

to warrant separate study, which is what I did.

Q And in undertaking that separate study, did you discuss the growth of the Waldorf=Astoria brand and the potential impact of the loss of these resorts with folks at Hilton corporate?

A Yes. And I discussed with Hilton the budget that they have currently, where there's money that flows in and supports the brand.

Hilton, as I recall -- for example, the Waldorf=Astoria brand level, which is what this is directed at, has a current subsidy on the order of $17 million, growing over the next four years to 25 million. And so it's this increased funding corporately that Hilton will be obligated to now provide that is the essence of the loss that I'm describing here.

Q Are you referring to Joint Exhibit No. 5, which is in the smaller book?

A (Witness reviews exhibits.)

Yes, this one right here.

Q And when you talk about the subsidy, what are you -- what are you talking about?

A Well, as you can see there, on the very bottom of this page, or close to the bottom, there's an enclosed box for 2012. There's a line item called "cumulative surplus," the deficit. And the deficit is the seventeen-million-plus that I was referring to previously.

Q That --

A Now --
Q That's 17 million as of the end of this year.
A As of the end of 2012.
Q And the other figure you were talking about, is that the end of 2016?
A 2016, that definitely grows to twenty-five million five. And that -- and that increased deficit is driven by the terminations. You can see the lost fees from the terminated hotels on the higher level in this chart.
Q Do you have any reason to doubt the figures that are set forth in that exhibit?
A No, not at all.
Q I'd like to turn your attention to Waldorf=Astoria Exhibit No. 25, which is your initial report, in the bigger book. And if you would turn to Page 50, I think it would be worthwhile to work through your analysis on that particular page.
A Yes. So on this page, I've take the next five years, 2012 to '16; and, as you can see, the line item -- the second -- the first line item is group services expense at two percent of gross revenue, which is derived from the projections of revenue we discussed earlier.
And a little further down, you can see that there is a line item marked MPV of the group expense for the balance of the term, and that figure is eighty-six million nine hundred and forty-five.

So Hilton, at the end of five years, will finally find a transaction that will replace this eighty-six million nine forty-five, which absent the termination of these management agreements, would have flowed to Hilton at that point in time.

In order for Hilton to secure this amount of money to replace the foregone group service expense lost as a consequence of the HMA terminations, they would have to pay key money, which in the normal course of business for a volume of this size, in my estimation, would amount to approximately twenty-five percent.

Q Now why did you come to that conclusion?

A I came to that conclusion because, in the super-competitive environment that we are in today, and I project we will continue to be in during this period of time, for management agreements, companies like Hilton really have to step up and show financial commitment in order to secure long-term streams of fee income.

Hilton certainly stepped up in a very big way in 2006 to secure this dream. I'm not suggesting they repeat the performance again here, but it seemed to me that, on the order of magnitude of twenty-five percent key money would be what I have seen in the marketplace; what Hilton, Mr. Middleton, for example, has indicated to me, is sort of the going rate, if you will, to buy into an agreement of this nature that would produce this kind of stream, relative to this expense.

Q When you say "an agreements of this nature," what do you mean?

A Well, an agreement that was last until 2034 (sic), which is the duration of these agreements.

Q Why did you use an eight percent discount rate?

A The eight percent discount rate is used for the same reason that I had used it for the management fees, the three percent management fee, because that is the rate that I deemed to be suitable for fee income like this. And there is no reason to project -- or rather, to use a different discount rate for this type of income because they are both generated by the same time of conflict.

Q When you talk about using key money equivalent to twenty-five percent, you're talking about twenty-five percent of what?

A Of this net present value of 86 million. So, in order to secure that value, Hilton of would have to pay twenty-five percent key money, and that's a cost to Hilton, which is this twenty-one million seven thirty-six. They would have to write a check to replace this.

Q In other words, to obtain a new -- new management contracts to replace its revenue?

A To replace this.

Q All right. Can you look simply at the numbers of properties that Hilton may be bringing into the Waldorf=Astoria system and drawing any conclusions as to how quickly it will be

able to replace the income from the three resorts with regard to group services expenses?
A Well, yes. I think it's informative, and I think when we get to the discussion of the Waldorf brand damage, we we'll see some of these figures. But suffice it to say that, given the -- you know, the pace, the steady pace, it's going to take five years, in my judgment.
And again, what's important here is that I'm not looking at the existing pipeline to mitigate this because the existing pipeline is a current asset of Hilton, and I would not be, therefore, counting -- accounting for the damage Hilton would incur, because that money they already have.
Q So you consider that to be --
A Prospectively.
Q -- present assets of Hilton?
A Absolutely. And that's how, when it was a public company, as is the case for most public companies and as we know, they are valued by the public markets on the basis of their future earnings, not what has happened in the past. Although the past is important, everything looks forward. And so growth companies have higher multiples than companies that don't grow.
Q Now the debtors' expert Mr. Morone does not attribute any loss to group services expense; in fact, he opines that Hilton will actually save money by not having to manage these resorts because Hilton is subsidizing these resorts with regard to

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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                                  .
                                  . Chapter 11
IN RE:                            .
                                  . Case No. 11-10372 (SHL)
MSR RESORT GOLF COURSE, LLC,      .
et al,                            . New York, New York
                                  . Tuesday, July 3, 2012
                  Debtors.        . 2:26 p.m.
. . . . . . . . . . . . . . . . . Volume 8.  Pages 849-986
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TRANSCRIPT OF
TRIAL RE: MOTION TO AUTHORIZE/MOTION OF MSR RESORT GOLF COURSE LLC, ET AL, FOR ENTRY OF AN ORDER ESTIMATING DAMAGES RESULTING FROM REJECTION OF THE HILTON MANAGEMENT AGREEMENTS AND AN ORDER AUTHORIZING REJECTION OF THE HILTON MANAGEMENT AGREEMENTS

BEFORE THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

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Q And if the Grand Wailea expansion ever happens, Hilton is not going to be paying for it, correct?
A No. But it's going to be benefitting from it.
Q I understand.
But the owners are going to be paying for it, right?
A Absolutely.
Q Okay. Let's turn our attention to group services.
And I think there were two components of your group services analyses. One was the lost payments to Hilton for group services as a result of termination, right?
A Correct.
Q And the other was the key money that you think Hilton will have to pay to replace the lost group service payments, correct?
A Correct.
Q Let's talk about the first prong, the lost payments to Hilton for group services.
Do you know what dollar amount you placed on this?
A I would have to look at the report. Do you have -- let's see ...
Q Is it about 17 million?
A (Witness reviews exhibits.)
THE COURT: Do we have a page if the report we can look at.
MR. LEON: I believe it's at 49, but I want to check

that.

(Pause in proceedings.)

MR. LEON: Yes. It's at 49 --

THE COURT: Looks like 49 and 50.

MR. LEON: -- but you have to reverse-engineer it a little bit.

BY MR. LEON:

Q Are you at 49?

A Yeah. Page 49, yep.

Q Okay. You're -- just so I'm clear, the total damages you attribute to group services is 38.9 million, correct?

A Correct.

Q And of that, 21.7 million is for the key money that we'll get to, correct?

A Correct.

Q So the loss future payments you valued at about 17 million. Is that right?

A (Witness reviews exhibit.)

For the five years leading up to the payment of the -- of the key money, yes.

Q Okay. And in your report, you assume that it would take five years for Hilton to fully replace the lost group service payments it would have received under these management agreement, correct?

A Correct.

Q And that assumption is based on your experience, right?
A Yes, that's correct.
Q And I believe you testified in deposition that you did an internal mental analysis, where you considered two years and four years and six years and eight years; decided that five years was the appropriate number, right?
A I'm not sure about the two, four, six, eight, but I arrived ultimately at a five-year time span, which, on the basis of my review of all of the facts and my experience, I thought was appropriate.
Q And your internal mental analysis, correct?
A Most of my analysis is internal, and it's mental, yes.
Q Okay. Now you talked earlier about Joint Exhibit 5?
A Yes.
Q Do you recall that?
A Which one is that?
(Witness reviews exhibits.)
Q Let me know when you can find it. It's called "Waldorf=Astoria Forecast of Brand Sources and Uses of Funds."
A Yes.
Q Let me know when you're there, sir.
A Yes, I have it.
Q Okay. Now your analysis of the lost group services payments was premised, as you said, on the assumption that it would take five years to replace the group service payments

EXHIBIT 5

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
MSR RESORT GOLF COURSE LLC, *et al.*,[1]	)	Case No. 11-10372 (SHL)
Debtors.	)	Jointly Administered

WALDORF=ASTORIA MANAGEMENT LLC'S POST-TRIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATING TO THE MOTION OF MSR RESORT GOLF COURSE LLC, *ET AL.*, FOR ENTRY OF AN ORDER ESTIMATING DAMAGES RESULTING FROM REJECTION OF THE HILTON MANAGEMENT AGREEMENTS

[1] The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number include: MSR Resort Golf Course LLC (7388); MSR Biltmore Resort, LP (5736); MSR Claremont Resort, LP (5787); MSR Desert Resort, LP (5850); MSR Grand Wailea Resort, LP (5708); MSR Resort Ancillary Tenant, LLC (9698); MSR Resort Biltmore Real Estate, Inc. (8464); MSR Resort Desert Real Estate, Inc. (9265); MSR Resort Hotel, LP (5558); MSR Resort Intermediate Mezz GP, LLC (3864); MSR Resort Intermediate Mezz LLC (7342); MSR Resort Intermediate Mezz, LP (3865); MSR Resort Intermediate MREP, LLC (9703); MSR Resort Lodging Tenant, LLC (9699); MSR Resort REP, LLC (9708); MSR Resort Senior Mezz GP, LLC (9969); MSR Resort Senior Mezz LLC (7348); MSR Resort Senior Mezz, LP (9971); MSR Resort Senior MREP, LLC (9707); MSR Resort Silver Properties, LP (5674); MSR Resort SPE GP II LLC (5611); MSR Resort SPE GP LLC (7349); MSR Resort Sub Intermediate Mezz GP, LLC (1186); MSR Resort Sub Intermediate Mezz LLC (7341); MSR Resort Sub Intermediate Mezz, LP (1187); MSR Resort Sub Intermediate MREP, LLC (9701); MSR Resort Sub Senior Mezz GP, LLC (9966); MSR Resort Sub Senior Mezz LLC (7347); MSR Resort Sub Senior Mezz, LP (9968); and MSR Resort Sub Senior MREP, LLC (9705). The location of the Debtors' service address is: c/o CNL-AB LLC, 1251 Avenue of the Americas, New York, New York 10020.

fees is derived from a hotel's total revenues, the receipt of such fees is far less risky than if the fees were a function of the hotel's profitability, as is the case with incentive fees. *See* W-A Tr. Ex. 23 at p. 2. The reason for this is that like the Base Fee and the Corporate Overhead Fee under the HMAs, base management fees are typically paid first from a hotel's total revenues, as opposed to payments to equity, which can only made after accounting for all of a hotel's expenses. *See id.* Indeed, a hotel's total revenue stream is typically 30% to 50% less volatile than that of its income before fixed charges, which itself is less volatile than a hotel's net operating income. *See id.* at p. 3.

81. The Debtors suggest that the Court should consider that Hilton used a 23% discount rate for the incentive fees it expected to earn from the contracts. Although Hilton expected the payment of Incentive Fees at the time it acquired the HMAs and applied a 23% discount rate to value such fees, *see* Joint Ex. 1 at p. 3, Ex. 4, those facts are irrelevant because Hilton is not seeking payment for any foregone Incentive Fees. Moreover, Hilton has never used a "blended" rate (combining the discount rate for base and incentive fees) to analyze a deal; rather it applies different discount rates to different income streams. *See* Trial Tr. at 393:10-25, 394:1-3; 553:17-25, 554:1-7. Because Hilton does not seek damages for lost Incentive Fees and expects to receive only the Base Fee and the Corporate Overhead Fee, the 8% discount rate is the only appropriate rate to measure the damages Hilton would suffer if the MSR Tenants reject the HMAs.

82. The Debtors criticize Hennessey's analysis because the data from PKF Consulting ("PKF") upon which he partially relied in concluding that a hotel's total revenues are typically less risky than a hotel's income before fixed charges is not applicable to the Hilton Resorts. The Debtors suggest that this data is useless because it is derived from smaller hotels throughout the

company, a time period going back for many years. *See* Trial Tr. at 209:20-25, 301:4-6, 401:15-19. The Court also notes that there was no special risk at the time these HMAs were entered into in 2006, a time both sides agree was robust for the hotel industry. *See id.* at 119:3-15, 1146:20-23. These considerations suggest lower risk, and here, a lower discount rate.

96. In sum, the Court accepts testimony of Hilton's fact witnesses and experts that the revenues of the Hilton Resorts, and Hilton's corresponding fees based on such revenues, are actually less risky than those of Hilton's typical management agreements. *See* Trial Tr. at 390:13-25, 391:1-5, 497:3-10; *see also* W-A Tr. Ex. 23 at p. 4.

97. As set forth above, the Court finds Hilton's analysis particularly reliable and unbiased and accepts it. Indeed, Hennessey testified that:

> [Morone's discount] rates are clearly rates of return that are much more proximate to, either to the property's overall discount rate or the even [sic] equity yield rate; much more risky investment positions that the position that Hilton had for its fees under the HMAs. An it's a -- it's a -- from an investment point of view, it's a very significant differential, and it's inconsistent with how I've seen other hotel companies valuing HMAs over the years.

See Trial Tr. at 551:24-25, 552:1-6.

98. The Court also accepts Cline's discount rate analysis for the Extension Term of the HMAs. Indeed, Cline argues convincingly that two approaches should be applied and reconciled in arriving at an appropriate discount to the fees Hilton would receive during the Extension Term. *See* W-A Tr. Ex. 25 at pp. 45-46. First, Cline applied a 12% discount rate to account for the heightened risk of termination during the Extension Term.[37] Second, Cline assumed a probability of sale for each of the first five years of the Extension Term with the associated liquidated damages to Hilton built into an "expected value." *See id.* at p. 45. The discount rate for this second approach is 8% because the risk of sale is considered in the

---

[37] The MSR Tenants may terminate the HMAs during the Extension Term upon a sale of the Hilton Resorts, which would trigger Hilton's right to receive liquidated damages under the HMAs. *See* Joint Ex. 2 at §§ 3.4.1 – 3.4.3.

probability of sale analysis and the projected fee income is then discounted the same rate as that used for the Base Term. *See id.*; *see also* Trial Tr. at 811:2-25, 812:1-4.

F. <u>Cline Versus Morone Comparisons</u>

99. The Court notes that Cline provides a sliding-scale chart showing adjustments to Morone's damages calculations that the Court finds instructive. *See* W-A Tr. Ex. at p. 30.

100. In addition, if the Court applied differing discount rates ranging from 8% to 13% to Cline's financial projections to calculate the present value of Hilton's lost Base Fee and Corporate Overhead Fee, Hilton's damages for the loss of all three HMAs would be as follows:

Discount Rate	Loss (in 000's)
8.0%	$165,408
9.0%	$152,168
10.0%	$140,472
11.0%	$130,104
12.0%	$120,882
13.0%	$112,650

G. <u>Group Services Expenses</u>

101. The HMAs provide for the payment of a Group Services Expense to Hilton, which shall not exceed 2% of gross revenues. *See* Joint Ex. 2 at § 5.2; *see also* Trial Tr. at 180:8-14. The Group Services Expense represents a reimbursement to Hilton for the costs incurred in providing Group Services to the Waldorf Astoria brand generally, including advertising, marketing, group services, reservation services and other brand support. *See* Joint Ex. 2 at §§ 2.6, 5.2; *see also* Trial Tr. at 179:17-25, 180:1-14. All Waldorf Astoria owners pay group services or similar expenses into a fund that Hilton uses to market and promote the brand and employ individuals dedicated to the brand.[38] *See* Trial Tr. at 283:17-25, 284:1-12. The Group Services for the Waldorf Astoria brand are not allocated or attributable to any one or more

[38] Morone errantly speculates that Hilton is contractually obligated to pass these group services expenses along to its owners. *See* Debtors' Ex. 2 at p. 19. Rather, it is a percentage of revenue agreed to be paid by an owner as part of its contract with Hilton.

11-10372-shl Doc 1344 Filed 07/19/12 Entered 07/19/12 12:08:53 Main Document
Pg 64 of 99

resorts are actually paying *less* than 4% of room revenue for 2012-2014. This is not surprising as a number of witnesses testified that the resorts obtain a large percentage of their overall revenue from non-room sources. *See e.g.* Trial Tr. at 995:2-15, 996:11-25, 997:23-25, 998:1-11.

108. Lastly, Morone decreases Hilton's future profits under this "subsidy" theory for Grand Wailea and Arizona Biltmore, but, without explanation, does not do likewise for La Quinta. *See* Debtors' Ex. 3. As the three Hilton Resorts are similarly situated because they all pay the Group Services Expenses, one would expect Morone's "subsidy" theory would apply to all three resorts. That Morone omitted any reference to this theory in his report for La Quinta and did not explain its absence further reduces Morone's credibility in the Court's view.

109. The Court also accepts Cline's analysis and conclusion that it will take Hilton at least five years to replace the Group Services Expenses that it would lose if the MSR Tenants reject the HMAs. *See* W-A Tr. Ex. 24 at p. 49. Indeed, the Court finds that Cline's five-year projection is conservative because Hilton's testimony at trial suggested that it would be a tremendously difficult and lengthier process for Hilton to replace the HMAs. *See* Trial Tr. at 108:16-25, 109:1-3, 130:17-25, 131:1-18, 305:11-25, 306:1-12, 404:10-25. In addition, during those five years, Hilton will fund out of pocket the amount of Group Services Expenses that the Hilton Resorts would have otherwise contributed, which Cline estimates have a net present value of $17,190,000. *See* W-A Tr. Ex. at pp. 49-50. In addition, the Court accepts Cline's conclusion that Hilton would have to pay "key" money totaling $21,736,000 to obtain additional management agreements for the Waldorf Astoria brand to replace the foregone Group Services Expenses. *See id*. Key money represents funds that a management company may be required to pay to a hotel owner to obtain management rights, and the payment of key money is typical to obtain management rights for hotels and resorts suitable to be converted to the Waldorf Astoria

brand. *See* Trial Tr. at 403:16-25, 404:1-25. The unrefuted testimony at trial, which the Court accepts, is that Hilton will have to pay considerable key money to replace resorts of the three Hilton Resorts' stature. *See id*. at 305:11-25, 306:1-4, 404:10-25.

110. The net present value of the foregone Groups Services Expenses (*i.e.*, $17,190,000 plus the $21,736,000 in key money) totals $38,926,000, which Cline allocates to the Hilton Resorts as follows: (a) Grand Wailea ($18,193,000); (b) Arizona Biltmore ($9,507,000); and (c) La Quinta ($11,227,000). The Court accepts Cline's analysis and conclusions.

H. <u>The Grand Wailea Expansion</u>

111. In April 2012, the County of Maui granted final approval for a $250 million expansion at Grand Wailea (the "Expansion"), which would add approximately 310 additional rooms, increasing the size of the resort from 780 to 1,090 rooms and thereby increasing the resort's total revenues and Hilton's corresponding Base Fee and Corporate Overhead Fee. *See* W-A Tr. Ex. 25 at p. 74; *see also* Trial Tr. at 608:6-25, 609:1-24. Bailey testified that the plan for the Expansion was in the works since 2007. *See id*.; *see also* Trial Tr. at 672:1-4. Hilton's Senior Vice President of Development for the Caribbean and Latin America and Timeshare Development in Hawaii, Ted Middleton, testified that he knew about the Expansion possibilities back in 2005 when Hilton was looking at acquiring the HMAs. *See id*. at 132:13-25, 133:1-8.

112. That the Expansion has substantial value is beyond dispute. Middleton described the Expansion as "low hanging fruit," *see id*. at 132:22-25, and Cline opined that the Expansion's approval is "literally golden", *see id* at 835:15-18, and that he could not "imagine any reasonable investor . . . not pursuing [the Expansion]", *see id*. at 837:3-7. Shumaker, too, acknowledged the value of the Expansion rights. *See id*. at 1029:17-24, 1044:2-4.

EXHIBIT 6

Klugman, Maura M

From: Neff, David M. (Perkins Coie) [dneff@perkinscoie.com]
Sent: Wednesday, August 01, 2012 3:01 PM
To: Basta, Paul M; Leon, Eric F.; Khawaja, Atif; Klugman, Maura M; Husnick, Chad J.
Cc: Audette, Brian (Perkins Coie)
Subject: MSR Hilton Claim Analysis
Attachments: MSR damages calc - draft - 07_31_12 v2.xlsx

I have attached Hilton's analysis of its claims, in accordance with the judge's oral ruling yesterday.

David M. Neff
Perkins Coie LLP
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MSR Hilton Damages Summary

	Mgmt Fees	Group Svcs Fees	Total
Grand Wailea	50,441	15,516	65,956
Arizona Biltmore	28,178	8,259	36,437
La Quinta Resort	33,761	9,855	43,616
Totals	**112,380**	**33,630**	**146,010**

Grand Wailea

Assumptions	
Assumed Rejection Date	12/31/2012
Inflation Rate	2.5%
Management Fee	3.0%
Cost of Management	8.3%
Group Services Fee	2.0%
Discount Rate	12.6%

		Projection Period (1)				Inflation Period (2)																		
Year		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Adjusted Total Revenues																								
Marone		191,231	199,205	210,287	217,359																			
Cline		181,575	197,827	214,147	233,097																			
Average		186,403	198,516	212,217	225,228																			
Inflation Rate		---	---	---	---	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Projected Adj. Total Revenue		186,403	198,516	212,217	225,228	230,859	236,630	242,546	248,610	254,825	261,196	267,725	274,419	281,279	288,311	295,519	302,907	310,479	318,241	326,197	334,352	342,711	351,279	360,061
Management Fee @	3.0%	5,592	5,955	6,367	6,757	6,926	7,099	7,276	7,458	7,645	7,836	8,032	8,233	8,438	8,649	8,866	9,087	9,314	9,547	9,786	10,031	10,281	10,538	10,802
less: Cost of Management @	8.3%	(466)	(496)	(531)	(563)	(577)	(592)	(606)	(622)	(637)	(653)	(669)	(686)	(703)	(721)	(739)	(757)	(776)	(796)	(815)	(836)	(857)	(878)	(900)
Hilton Projected Profit		5,126	5,459	5,836	6,194	6,349	6,507	6,670	6,837	7,008	7,183	7,362	7,547	7,735	7,929	8,127	8,330	8,538	8,752	8,970	9,195	9,425	9,660	9,902
Hilton Profit Realized (3)		0	5,459	5,836	6,194	6,349	6,507	6,670	6,837	7,008	7,183	7,362	7,547	7,735	7,929	8,127	8,330	8,538	8,752	8,970	9,195	9,425	9,660	9,902
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0
PV @	12.6%	0	4,848	4,603	4,339	3,953	3,594	3,272	2,978	2,717	2,467	2,246	2,044	1,868	1,693	1,542	1,403	1,284	1,162	1,058	963	882	798	726

NPV - Management Fees	50,441

Group Services Fees

Projected Adj. Total Revenue		186,403	198,516	212,217	225,228	230,859	236,630
Group Services Fee @	2.0%	3,728	3,970	4,244	4,505	4,617	4,733
Hilton Projected Profit		3,728	3,970	4,244	4,505	4,617	4,733
Hilton Profit Realized (3)		0	3,970	4,244	4,505	4,617	4,733
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0
PV @	12.6%	0	3,526	3,348	3,155	2,872	2,615

NPV - Group Services Fees	15,516
Total NPV	**65,956**

(1) Adjusted Total Revenues in the projection period assumed to be the average between the two experts' projections to account for the 6% ruling on assumed capital investment; Cline projections only run through 2015 and use inflationary growth thereafter.
(2) Adjusted Total Revenues are grown as the resolved inflation rate of 2.5% after the last year that both experts projected operating results (2015).
(3) Projected Hilton profit as adjusted to account for the assumed date of contract rejection; model will calculate the result for any assumed date through 12/31/13 by entering the date in Excel date/time convention in cell D6.
(4) Adjusts discounting to account for assume rejection date.

Arizona Biltmore

Assumptions	
Assumed Rejection Date	12/31/2012
Inflation Rate	2.5%
Management Fee	3.0%
Cost of Management	8.3%
Group Services Fee	2.0%
Discount Rate	11.6%

		Projection Period (1)				Inflation Period (2)																		
Year		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Adjusted Total Revenues																								
Marone		90,887	98,083	106,743	112,263																			
Cline		93,947	106,884	113,836	121,803																			
Average		92,417	102,484	110,290	117,033																			
Inflation Rate		---	---	---	---	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Projected Adj. Total Revenue		92,417	102,484	110,290	117,033	119,959	122,958	126,032	129,183	132,412	135,722	139,115	142,593	146,158	149,812	153,557	157,396	161,331	165,365	169,499	173,736	178,080	182,532	187,095
Management Fee @	3.0%	2,773	3,075	3,309	3,511	3,599	3,689	3,781	3,875	3,972	4,072	4,173	4,278	4,385	4,494	4,607	4,722	4,840	4,961	5,085	5,212	5,342	5,476	5,613
less: Cost of Management @	8.3%	(231)	(256)	(276)	(293)	(300)	(307)	(315)	(323)	(331)	(339)	(348)	(356)	(365)	(375)	(384)	(393)	(403)	(413)	(424)	(434)	(445)	(456)	(468)
Hilton Projected Profit		2,541	2,818	3,033	3,218	3,299	3,381	3,466	3,553	3,641	3,732	3,826	3,921	4,019	4,120	4,223	4,328	4,437	4,548	4,661	4,778	4,897	5,020	5,145
Hilton Profit Realized (3)		0	2,818	3,033	3,218	3,299	3,381	3,466	3,553	3,641	3,732	3,826	3,921	4,019	4,120	4,223	4,328	4,437	4,548	4,661	4,778	4,897	5,020	5,145
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0
PV @	11.6%	0	2,525	2,435	2,316	2,129	1,953	1,793	1,647	1,516	1,389	1,276	1,172	1,080	988	908	834	769	703	646	593	548	500	459

NPV - Management Fees	28,178

Group Services Fees

		2012	2013	2014	2015	2016	2017
Projected Adj. Total Revenue		92,417	102,484	110,290	117,033	119,959	122,958
Group Services Fee @	2.0%	1,848	2,050	2,206	2,341	2,399	2,459
Hilton Projected Profit		1,848	2,050	2,206	2,341	2,399	2,459
Hilton Profit Realized (3)		0	2,050	2,206	2,341	2,399	2,459
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0
PV @	11.6%	0	1,837	1,771	1,684	1,547	1,421

NPV - Group Services Fees	8,259
Total NPV	**36,437**

(1) Adjusted Total Revenues in the projection period assumed to be the average between the two experts' projections to account for the 6% ruling on assumed capital investment; Cline projections only run through 2015 and use inflationary growth thereafter.
(2) Adjusted Total Revenues are grown as the resolved inflation rate of 2.5% after the last year that both experts projected operating results (2015).
(3) Projected Hilton profit as adjusted to account for the assumed date of contract rejection; model will calculate the result for any assumed date through 12/31/13 by entering the date in Excel date/time convention in cell D6.
(4) Adjusts discounting to account for assume rejection date.

La Quinta Resort

Assumptions	
Assumed Rejection Date	12/31/2012
Inflation Rate	2.5%
Management Fee	3.0%
Cost of Management	8.3%
Group Services Fee	2.0%
Discount Rate	11.6%

		Projection Period (1)				Inflation Period (2)																		
Year		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Adjusted Total Revenues																								
Marone		112,059	117,444	128,977	137,364																			
Cline		109,368	122,476	134,694	143,845																			
Average		110,713	119,960	131,836	140,604																			
Inflation Rate		---	---	---	---	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Projected Adj. Total Revenue		110,713	119,960	131,836	140,604	144,120	147,723	151,416	155,201	159,081	163,058	167,135	171,313	175,596	179,986	184,485	189,097	193,825	198,670	203,637	208,728	213,946	219,295	224,777
Management Fee @	3.0%	3,321	3,599	3,955	4,218	4,324	4,432	4,542	4,656	4,772	4,892	5,014	5,139	5,268	5,400	5,535	5,673	5,815	5,960	6,109	6,262	6,418	6,579	6,743
less: Cost of Management @	8.3%	(277)	(300)	(330)	(352)	(360)	(369)	(379)	(388)	(398)	(408)	(418)	(428)	(439)	(450)	(461)	(473)	(485)	(497)	(509)	(522)	(535)	(548)	(562)
Hilton Projected Profit		3,045	3,299	3,625	3,867	3,963	4,062	4,164	4,268	4,375	4,484	4,596	4,711	4,829	4,950	5,073	5,200	5,330	5,463	5,600	5,740	5,884	6,031	6,181
Hilton Profit Realized (3)		0	3,299	3,625	3,867	3,963	4,062	4,164	4,268	4,375	4,484	4,596	4,711	4,829	4,950	5,073	5,200	5,330	5,463	5,600	5,740	5,884	6,031	6,181
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0
PV @	11.6%	0	2,956	2,911	2,782	2,557	2,346	2,155	1,979	1,821	1,669	1,533	1,408	1,297	1,187	1,090	1,002	924	845	776	712	658	601	552

NPV - Management Fees	33,761

Group Services Fees

		2012	2013	2014	2015	2016	2017
Projected Adj. Total Revenue		110,713	119,960	131,836	140,604	144,120	147,723
Group Services Fee @	2.0%	2,214	2,399	2,637	2,812	2,882	2,954
Hilton Projected Profit		2,214	2,399	2,637	2,812	2,882	2,954
Hilton Profit Realized (3)		0	2,399	2,637	2,812	2,882	2,954
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0
PV @	11.6%	0	2,150	2,117	2,023	1,858	1,707

NPV - Group Services Fees	9,855
Total NPV	**43,616**

(1) Adjusted Total Revenues in the projection period assumed to be the average between the two experts' projections to account for the 6% ruling on assumed capital investment; Cline projections only run through 2015 and use inflationary growth thereafter.
(2) Adjusted Total Revenues are grown as the resolved inflation rate of 2.5% after the last year that both experts projected operating results (2015).
(3) Projected Hilton profit as adjusted to account for the assumed date of contract rejection; model will calculate the result for any assumed date through 12/31/13 by entering the date in Excel date/time convention in cell D6.
(4) Adjusts discounting to account for assume rejection date.

EXHIBIT 7

Summary of Hilton's Damages

	Mgmt Fees	Group Svcs Fees	Total
Grand Wailea	46,916	5,326	52,243
Arizona Biltmore	25,974	2,783	28,758
La Quinta Resort	31,113	3,287	34,400
Totals	**104,004**	**11,396**	**115,400**

Grand Wailea

Assumptions	
Assumed Rejection Date	12/31/2012
Inflation Rate	2.5%
Management Fee	3.0%
Cost of Management	8.3%
Group Services Fee	2.0%
Discount Rate	12.6%

		Projection Period (1)				Inflation Period (2)																		
Year		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Adjusted Total Revenues																								
Morone		191,231	199,205	210,287	217,359																			
Cline		181,575	197,827	214,147	233,097																			
Average		186,403	198,516	212,217	225,228																			
Inflation Rate		---	---	---	---	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Projected Adj. Total Revenue		186,403	198,516	212,217	225,228	230,859	236,630	242,546	248,610	254,825	261,196	267,725	274,419	281,279	288,311	295,519	302,907	310,479	318,241	326,197	334,352	342,711	351,279	360,061
Management Fee @	3.0%	5,592	5,955	6,367	6,757	6,926	7,099	7,276	7,458	7,645	7,836	8,032	8,233	8,438	8,649	8,866	9,087	9,314	9,547	9,786	10,031	10,281	10,538	10,802
less: Cost of Management @	8.3%	(466)	(496)	(531)	(563)	(577)	(592)	(606)	(622)	(637)	(653)	(669)	(686)	(703)	(721)	(739)	(757)	(776)	(796)	(815)	(836)	(857)	(878)	(900)
Hilton Projected Profit		5,126	5,459	5,836	6,194	6,349	6,507	6,670	6,837	7,008	7,183	7,362	7,547	7,735	7,929	8,127	8,330	8,538	8,752	8,970	9,195	9,425	9,660	9,902
Multiplied by: % Chance not Terminated (Per Cline)															75.0%	55.0%	40.0%	30.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Hilton Projected Profit (prob weighted)		5,126	5,459	5,836	6,194	6,349	6,507	6,670	6,837	7,008	7,183	7,362	7,547	7,735	5,946	4,470	3,332	2,561	2,188	2,243	2,299	2,356	2,415	2,475
Liquidated Damages (multiple of prior year's Base Mgmt Fee)															28,128	25,948	23,642	21,203	18,629	15,912	13,048	10,031	6,854	7,026
Multiplied by: % Terminated in that Year (Per Cline)															25.0%	20.0%	15.0%	10.0%	5.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Liquidated Damages (prob weighted)															7,032	5,190	3,546	2,120	931	0	0	0	0	0
Hilton Profit Realized (3)		0	5,459	5,836	6,194	6,349	6,507	6,670	6,837	7,008	7,183	7,362	7,547	7,735	12,978	9,659	6,878	4,682	3,119	2,243	2,299	2,356	2,415	2,475
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0
PV @	12.6%	0	4,848	4,603	4,339	3,953	3,594	3,272	2,978	2,717	2,467	2,246	2,044	1,868	2,772	1,832	1,159	704	414	265	241	221	199	182

NPV - Management Fees	46,916

(1) Adjusted Total Revenues in the projection period assumed to be the average between the two experts' projections to account for the 6% ruling on assumed capital investment; Cline projections only run through 2015 and use inflationary growth thereafter.
(2) Adjusted Total Revenues are grown as the resolved inflation rate of 2.5% after the last year that both experts projected operating results (2015).

Arizona Biltmore

Assumptions	
Assumed Rejection Date	12/31/2012
Inflation Rate	2.5%
Management Fee	3.0%
Cost of Management	8.3%
Group Services Fee	2.0%
Discount Rate	11.6%

		Projection Period (1)				Inflation Period (2)																		
Year		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Adjusted Total Revenues																								
Morone		90,887	98,083	106,743	112,263																			
Cline		93,947	106,884	113,836	121,803																			
Average		92,417	102,484	110,290	117,033																			
Inflation Rate		---	---	---	---	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Projected Adj. Total Revenue		92,417	102,484	110,290	117,033	119,959	122,958	126,032	129,183	132,412	135,722	139,115	142,593	146,158	149,812	153,557	157,396	161,331	165,365	169,499	173,736	178,080	182,532	187,095
Management Fee @	3.0%	2,773	3,075	3,309	3,511	3,599	3,689	3,781	3,875	3,972	4,072	4,173	4,278	4,385	4,494	4,607	4,722	4,840	4,961	5,085	5,212	5,342	5,476	5,613
less: Cost of Management @	8.3%	(231)	(256)	(276)	(293)	(300)	(307)	(315)	(323)	(331)	(339)	(348)	(356)	(365)	(375)	(384)	(393)	(403)	(413)	(424)	(434)	(445)	(456)	(468)
Hilton Projected Profit		2,541	2,818	3,033	3,218	3,299	3,381	3,466	3,553	3,641	3,732	3,826	3,921	4,019	4,120	4,223	4,328	4,437	4,548	4,661	4,778	4,897	5,020	5,145
Multiplied by: % Chance not Terminated (Per Cline)															75.0%	55.0%	40.0%	30.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Hilton Projected Profit (prob weighted)		2,541	2,818	3,033	3,218	3,299	3,381	3,466	3,553	3,641	3,732	3,826	3,921	4,019	3,090	2,323	1,731	1,331	1,137	1,165	1,194	1,224	1,255	1,286
Liquidated Damages (multiple of prior year's Base Mgmt Fee)															14,616	13,483	12,285	11,018	9,680	8,268	6,780	5,212	3,562	3,651
Multiplied by: % Terminated in that Year (Per Cline)															25.0%	20.0%	15.0%	10.0%	5.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Liquidated Damages (prob weighted)															3,654	2,697	1,843	1,102	484	0	0	0	0	0
Hilton Profit Realized (3)		0	2,818	3,033	3,218	3,299	3,381	3,466	3,553	3,641	3,732	3,826	3,921	4,019	6,744	5,019	3,574	2,433	1,621	1,165	1,194	1,224	1,255	1,286
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0
PV @	11.6%	0	2,525	2,435	2,316	2,129	1,953	1,793	1,647	1,516	1,389	1,276	1,172	1,080	1,618	1,079	688	422	251	161	148	137	125	115

NPV - Management Fees	25,974

(1) Adjusted Total Revenues in the projection period assumed to be the average between the two experts' projections to account for the 6% ruling on assumed capital investment; Cline projections only run through 2015 and use inflationary growth thereafter.
(2) Adjusted Total Revenues are grown as the resolved inflation rate of 2.5% after the last year that both experts projected operating results (2015).

La Quinta Resort

Assumptions	
Assumed Rejection Date	12/31/2012
Inflation Rate	2.5%
Management Fee	3.0%
Cost of Management	8.3%
Group Services Fee	2.0%
Discount Rate	11.6%

		Projection Period (1)				Inflation Period (2)																		
Year		2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
Adjusted Total Revenues																								
Morone		112,059	117,444	128,977	137,364																			
Cline		109,368	122,476	134,694	143,845																			
Average		110,713	119,960	131,836	140,604																			
Inflation Rate		---	---	---	---	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%	2.5%
Projected Adj. Total Revenue		110,713	119,960	131,836	140,604	144,120	147,723	151,416	155,201	159,081	163,058	167,135	171,313	175,596	179,986	184,485	189,097	193,825	198,670	203,637	208,728	213,946	219,295	224,777
Management Fee @	3.0%	3,321	3,599	3,955	4,218	4,324	4,432	4,542	4,656	4,772	4,892	5,014	5,139	5,268	5,400	5,535	5,673	5,815	5,960	6,109	6,262	6,418	6,579	6,743
less: Cost of Management @	8.3%	(277)	(300)	(330)	(352)	(360)	(369)	(379)	(388)	(398)	(408)	(418)	(428)	(439)	(450)	(461)	(473)	(485)	(497)	(509)	(522)	(535)	(548)	(562)
Hilton Projected Profit		3,045	3,299	3,625	3,867	3,963	4,062	4,164	4,268	4,375	4,484	4,596	4,711	4,829	4,950	5,073	5,200	5,330	5,463	5,600	5,740	5,884	6,031	6,181
Multiplied by: % Chance not Terminated (Per Cline)															75.0%	55.0%	40.0%	30.0%	25.0%	25.0%	25.0%	25.0%	25.0%	25.0%
Hilton Projected Profit (prob weighted)		3,045	3,299	3,625	3,867	3,963	4,062	4,164	4,268	4,375	4,484	4,596	4,711	4,829	3,712	2,790	2,080	1,599	1,366	1,400	1,435	1,471	1,508	1,545
Liquidated Damages (multiple of prior year's Base Mgmt Fee)															17,560	16,199	14,759	13,237	11,629	9,934	8,145	6,262	4,279	4,386
Multiplied by: % Terminated in that Year (Per Cline)															25.0%	20.0%	15.0%	10.0%	5.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Liquidated Damages (prob weighted)															4,390	3,240	2,214	1,324	581	0	0	0	0	0
Hilton Profit Realized (3)		0	3,299	3,625	3,867	3,963	4,062	4,164	4,268	4,375	4,484	4,596	4,711	4,829	8,102	6,030	4,294	2,923	1,947	1,400	1,435	1,471	1,508	1,545
PV Years (4)		0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	11.0	12.0	13.0	14.0	15.0	16.0	17.0	18.0	19.0	20.0	21.0	22.0
PV @	11.6%	0	2,956	2,911	2,782	2,557	2,346	2,155	1,979	1,821	1,669	1,533	1,408	1,297	1,943	1,296	827	507	301	194	178	165	150	138

NPV - Management Fees	31,113

(1) Adjusted Total Revenues in the projection period assumed to be the average between the two experts' projections to account for the 6% ruling on assumed capital investment; Cline projections only run through 2015 and use inflationary growth thereafter.
(2) Adjusted Total Revenues are grown as the resolved inflation rate of 2.5% after the last year that both experts projected operating results (2015).

MSR Resort Golf Course LLC

8/7/2012

Blended Discount Rate Calculation

($ in 000s)

Blended Discount Rate

		2013 - 2017 Total Revenues
Revenue	Grand Wailea	$1,103,450
	Arizona Biltmore	$572,723
	La Quinta	$684,242
Weighting of Revenues	Grand Wailea	46.75%
	Arizona Biltmore	24.26%
	La Quinta	28.99%
Discount Rate	Grand Wailea	12.60%
	Arizona Biltmore	11.60%
	La Quinta	11.60%
Blended Discount Rate, Weighted by Revenue		**12.07%**

Adjusted Group Services Fees

Hilton's Lost Group Services Fees at 8%	$17,190
Hilton Discount Rate	8.00%
Blended Discount Rate	12.07%
Ratio of Hilton Discount Rate to Blended Discount Rate	66.29%
Adjusted Group Services Fees	**$11,396**

2013	2014	2015	2016	2017
198,516	212,217	225,228	230,859	236,630
102,484	110,290	117,033	119,959	122,958
119,960	131,836	140,604	144,120	147,723